



THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE

August 17, 2001

Ms. Rita Chan
Leaking Underground Storage Tank Oversight Program
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose CA, 95120

Dear Ms. Chan:

San Jose Arena Block 5A

SUBJECT: ARENA SITE 5A PARKING LOT - REQUEST FOR SITE CLOSURE

We are pleased to submit for your consideration a copy of the Notice of Restriction of Use of the San Jose Arena Block 5A Parking Lot. The Notice, filed with the Santa Clara County Clerk's Office on August 2, 200, represents the last step in the process for obtaining site closure of the groundwater monitoring efforts in accordance with prior agreements with the Santa Clara Valley Water District (SCVWD).

The enclosed document is actually a conformed copy of that filed with the County Clerk's Office. We don't expect to receive the actual recorded from the County Clerks Office for sometime yet, but felt that this form would be sufficient for the SCVWD's consideration of site closure. Please note that pursuant to prior agreements, Earth Tech, our geological consultants on this project, has ceased all monitoring efforts of this site in anticipation of site closure.

We look forward to a favorable response from SCVWD. In the interim please call me at (408) 794-1088, if there are any questions.

Sincerely,

Dolores A. Montenegro
DOLORES A. MONTENEGRO
Project Manager

c: Bill Ekern
Katherine Harasz

When recorded mail to:
Redevelopment Agency
of the City of San Jose
50 West San Fernando St.
11th Floor
San Jose, California 95113
Attn.: General Counsel

CONFORMED COPY: This document has
not been compared with the original.
SANTA CLARA COUNTY CLERK-RECORDER

RECORDED FOR THE BENEFIT OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE
AND IS EXEMPT FROM FEE PER GOVERNMENT CODE SECTIONS 27383 AND 6103

**NOTICE OF RESTRICTION OF USE
OF SAN JOSE ARENA BLOCK 5A PARKING LOT
SAN JOSE, CALIFORNIA**

Notice is given this 1st day of August, 2001, by the
Redevelopment Agency of the City of San Jose ("Agency"), the owner of record of
certain parcels situated in San Jose, County of Santa Clara, State of California,
collectively known as the San Jose Arena Block 5A Parking Lot, and more fully
described in Exhibit A, attached hereto and incorporated herein by this reference (the
"Parking Lot") with reference to the following facts:

- A. Fuel related hydrocarbon contaminants may be present in the vadose soil beneath the Parking Lot at levels which are in excess of the Santa Clara Valley Water District ("SCVWD") guidance criteria for fuel leak sites of 100 milligrams per kilogram (mg/kg) of gasoline and 1,000 mg/kg of diesel.
- B. Fuel related hydrocarbon contaminants (specifically gasoline, diesel, benzene, toluene, ethyl benzene, xylenes [BTEX] and methyl t-butyl ether [MTBE]) are present in the shallow groundwater/capillary fringe soil beneath the Parking Lot at levels which are in excess of the California Drinking Water Standards; therefore, the shallow groundwater is not suitable for use as a drinking water supply or for use as an individual/commercial supply.
- C. The Agency desires and intends that in order to protect the present or future public health and safety, the Parking Lot shall be used in such a manner as to avoid potential harm to persons or property which may result from the presence of contamination in the soil and groundwater at levels above SCVWD guidance criteria and California Drinking Water Standards.

ARTICLE I GENERAL PROVISIONS

1.01 Provisions to Run With the Land.

This Notice sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), upon and subject to which the Parking Lot and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each of all the Restrictions shall run with the land, and pass with each and every portion of the Parking Lot, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Parking Lot unless expressly stated as applicable to a specific portion of the Parking Lot. Each and all of the Restrictions run with the land.

1.02 Concurrence of Owners Presumed.

All purchasers, lessees, or possessors of any portion of the Parking Lot shall be deemed by their purchase, leasing, or possession of such Parking Lot, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants, and that their interest in the Parking Lot shall be subject to the Restrictions contained herein.

ARTICLE II DEFINITIONS

2.01 SCVWD.

"SCVWD" shall mean the Santa Clara Valley Water District, and successor agencies, if any.

2.02 Occupants.

"Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Parking Lot.

2.03 Owner.

"Owner" shall mean the Agency or its successor in interest, including heirs and assigns, who hold title to all or any portion of the Parking Lot.

ARTICLE III
DEVELOPMENT, USE, AND CONVEYANCE OF THE PARKING LOT

3.01 Restrictions on Use.

The Agency promises not to perform any subsurface invasive type activities at the Parking Lot (such as, but not limited to, digging, drilling, excavation) beyond those activities required to repair and maintain the asphalt cover, provided such activities do not extend more than one (1) foot into the subsurface soil.

The Agency promises not to use the shallow groundwater at the Parking Lot for drinking water purposes or industrial/commercial use, until such time as it is determined in writing by the SCVWD that the groundwater is suitable for such use.

3.02 Enforcement.

Failure of the Owner to comply with the Restrictions, as set forth in paragraph 3.01, shall be grounds for the SCVWD, by reason of the Restrictions, to require that the Owner cease and desist the following:

Conducting subsurface invasive activities and remove any facilities or equipment designed to perform invasive activities.

Using the groundwater for drinking water or industrial/commercial purposes, and remove any facilities or equipment designed to draw and distribute groundwater for such purposes.

Violation of the Restrictions shall be grounds for the SCVWD to seek administrative or judicial relief against the Owner, as provided by law.

3.03 Notice in Agreements.

All Owners shall execute a written instrument which shall accompany or be included in all purchase agreements relating to the Parking Lot. The instrument shall contain the following statement:

"The land described herein is subject to Restrictions which restrict subsurface invasive activities and the use of the groundwater beneath the Parking Lot for drinking water or industrial/commercial purposes. Such Restrictions render the Owner, lessee or other possessor of the land subject to, and responsible for compliance with such Restrictions, and failure to comply with said Restrictions may subject such persons to actions for enforcement and liability for any damages resulting from such non-compliance."

ARTICLE IV VARIANCE AND TERMINATION

4.01 Variance.

Any Owner or, with Owner's consent, any Occupant of the Parking Lot or any portion thereof may apply to the SCVWD for a written variance from the provisions of this Covenant. Such application shall be made in accordance with applicable law.

4.02 Termination.

Any Owner or, with Owner's consent, any Occupant of the Parking Lot or any portion thereof may apply to the SCVWD for a termination of the Restrictions as they apply to all or any portion of the Parking Lot. Such application shall be made in accordance with applicable law.

4.03 Term.

Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, these Restrictions shall continue in effect in perpetuity.

ARTICLE V MISCELLANEOUS

5.01 No Dedication Intended.

Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Parking Lot or any portion thereof to the general public or for any purposes whatsoever.

5.02 Partial Invalidity.

If any portion of the Restrictions set forth herein or term is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.03 Article Headings.

Headings at the beginning of each numbered article of these Restrictions are solely for the convenience of the parties and are not a part of the Restrictions.

5.04 Recordation.

This instrument shall be recorded by the covenantor in the County of Santa Clara, within ten (10) days of the date of execution.

IN WITNESS WHEREOF, the Agency executes this instrument as of the date set forth above.

OWNER

Agency

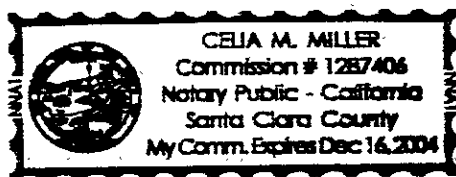
By: 

Susan F. Shick, Executive Director

State of California

County of Santa Clara

On this 1st day of August, 2001, before me,
Celia M. Miller, the undersigned Notary Public, personally
appeared SUSAN F. SHICK, EXECUTIVE DIRECTOR OF THE REDEVELOPMENT
AGENCY OF THE CITY OF SAN JOSE, personally known to me to be the person
whose name is subscribed to the within instrument and acknowledged to me that she
executed the same in her authorized capacity, and that by her signature, the entity upon
behalf of which she acted executed the instrument.



WITNESS my hand and official seal.

Celia M. Miller
SIGNATURE OF NOTARY

EXHIBIT A

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PARCEL 1:

BEGINNING at the point of intersection of the Southerly line of Santa Clara Street, formerly The Alameda, with the Westerly line of Autumn Street, formerly St. Mary's Street; thence Westerly along the Southerly line of said Santa Clara Street, 60 feet; thence Southerly and parallel with the Westerly line of Autumn Street 120 feet; thence Easterly and parallel with Santa Clara Street, 60 feet to the Westerly line of Autumn Street; thence Northerly and along the Westerly line of Autumn Street 110 feet to the point of beginning and being a portion of Lot 20 of Los Coches Rancho.

PARCEL 2:

BEGINNING at a point on the Westerly line of Autumn Street, formerly St. Mary's Street, distant thereon Southerly 120 feet from the point of intersection of the Southerly line of Santa Clara Street, formerly The Alameda, with the Westerly line of Autumn Street; thence Westerly and parallel with said Santa Clara Street, 38 feet and 11 inches to the Easterly line of land described in the Deed from Jos. A. Rucker, Administrator to A. D. Guidotti, recorded on June 21, 1909 in Book 140 of Deeds, page 574; thence Southerly and along said Easterly line, 45 feet to the Northwestern corner of land described in the Deed from Jos. A. Rucker, Administrator to Hugh Macdonald, by Deed recorded on September 7, 1898 in Book 110 of Deeds, page 522, Santa Clara County Records; thence Easterly and along the Northerly line of land described in the Deed to said Macdonald, 38 feet and 11 inches to the Westerly line of Autumn Street; thence Northerly 45 feet to the point of beginning, and being a portion of Lot 20 Los Coches Rancho.

PARCEL 3:

COMMENCING at the point on the Easterly line of South Montgomery Street (formerly East Street) distant thereon Southerly 120 feet from the point of intersection of the Southerly line of Santa Clara Street, formerly The Alameda, with the Easterly line of South Montgomery Street, said point of commencement being the Southwesterly corner of that certain parcel of land conveyed by Patrick Kelly and wife to Charles McDonald, by Deed dated and recorded February 25, 1868 in Book I of Deeds, page 168; thence Southerly along said Easterly line of South Montgomery Street, 60 feet to the Northwestern corner of that certain parcel of land conveyed by Patrick Kelly and wife to Frank M. McKenna, by Deed recorded February

(Cont'd on next page)

EXHIBIT A

16, 1862 in Book Q of Maps, page 293; thence Easterly and parallel with the Southerly line of the Alameda and along the Northerly line of the land so conveyed to said McKenna, 113 feet; thence Southerly and parallel with South Montgomery Street, 10 feet; thence Easterly and parallel with Santa Clara Street, 24 feet 1 inch to the Westerly line of land conveyed by Joe H. Rucker, Administrator of the Estate of Susan Rucker, deceased, to Hugh MacDonald by Deed recorded on September 7, 1895 in Book 210 of Deeds, page 522; thence Northerly and parallel with the Westerly line of Autumn Street, formerly St. Mary's Street and along the Westerly line of property conveyed to Hugh MacDonald and along the Westerly line of land conveyed by Joe H. Rucker, Administrator of the Estate of Susan Rucker, deceased to E. H. Kooser, by Deed recorded March 2, 1901 in Book 240 of Deeds, page 52, 90 feet; thence Westerly and parallel with the Southerly line of Santa Clara Street, 137 feet and 1 inch to the Easterly line of South Montgomery Street and point of commencement, being a portion of Lot 20 of the Los Cochinos Rancho according to the Map recorded in Book A of Maps, page 47.

PARCEL 4:

COMMENCING at a point on the Southerly line of Santa Clara Street, formerly The Alameda, distant thereon 50 feet Easterly from the point of intersection of the Easterly line of South Montgomery Street, formerly called East Street with the Southerly line of Santa Clara Street, formerly The Alameda; running thence Southerly along the line of land now or formerly of Charlotte E. Smith, 100 feet to a post; thence Westerly at right angles and along the Southerly line of the lands now or formerly of Charlotte E. Smith, 50 feet to a point on the Easterly line of South Montgomery Street; thence Southerly along said line of South Montgomery Street, 20 feet; thence at right angles, Easterly 108 feet to a point; thence at right angles Northerly 120 feet to a point on the Southerly line of Santa Clara Street; thence Westerly along the Southerly line of Santa Clara Street, 58 feet to the point of commencement, being a portion of Lot 20 of the Rancho de Los Cochinos, according to a Map of the same of record in Book 'A' of Maps, page 47.

PARCEL 5:

Portion of Lot 20 of the Los Cochinos Rancho, according to a Map in Book 'A' of Maps, page 47, records of Santa Clara County, which Map is entitled, 'Map showing the Subdivision of the Rancho de Los Cochinos, adjoining the City of San Jose, Santa Clara County', and more particularly described as follows:

(Cont'd on next page)

EXHIBIT A

COMMENCING at a point on the Westerly line of Autumn Street, formerly St. Mary's Street, distant thereon 110 feet Southerly from the point of intersection thereof, with the Southerly line of Santa Clara Street, formerly The Alameda, said point of commencement being the Southeast corner of that certain parcel of land conveyed by Patrick Kelly and wife to S. W. Easterday, by Deed recorded on November 7, 1866 in Volume "V" of Deeds, page 555; thence at right angles Westerly on and along the Southerly line of the land so conveyed to said Easterday, 113 feet to the Easterly line of that certain parcel of land conveyed by Patrick Kelly and wife to Frank M. McKenna, by Deed recorded on December 16, 1862 in Volume "Q" of Deeds, page 293; thence Southerly on and along the Easterly line of the land so conveyed to said McKenna and the Easterly line of that certain parcel of land conveyed by Patrick Kelly and wife to James B. Martin, by Deed recorded March 9, 1863 in Volume "Q" of Deeds, page 556, 40 feet to a point distant on said line 10 feet Northerly from the Northwest corner of that certain parcel of land conveyed by Patrick Kelly and wife to Michael Corbit, by Deed recorded on October 6, 1864 in Volume "S" of Deeds, page 781; thence Easterly and parallel with and distant 10 feet, northerly of the land so conveyed to said Michael Corbit, 113 feet to the Westerly line of Autumn Street; thence Northerly along the Westerly line of said Autumn Street, 40 feet to the point of commencement.

PARCEL 6:

COMMENCING at a point on the Easterly line of East Street (now Montgomery Street) 200 feet Southerly from the intersection of said Easterly line of Montgomery Street with the Southerly line of The Alameda, and running thence Southerly along the said East line of Montgomery Street, 50 feet to a post; thence at right angles Easterly 113 feet; thence at right angles Northerly 50 feet; thence at right angles Westerly 113 feet to the point of commencement.

PARCEL 7:

COMMENCING at the intersection of the southerly line of The Alameda Road with the Easterly line of Montgomery Street, formerly East Street (as the same existed on March 3, 1865) and running thence Southerly and along the Easterly line of Montgomery Street (formerly East Street) 100 feet to a stake; thence at right angles Easterly 50 feet; thence at right angles Northerly parallel with Montgomery (formerly East) Street, 100 feet to the Southerly line of The Alameda Road and thence Westerly and

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EXHIBIT A

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along the Southerly line of said Alameda Road, 50 feet to the point of commencement, being a part of Kelly's Subdivision of Lot 20 of the Subdivision of the Los Coches Rancho.

PARCEL 8:

BEGINNING at a point on the Westerly line of Autumn Street, formerly St. Mary's Street, distant thereon 110 feet Southerly from the intersection thereof with the Southerly line of Santa Clara Street, also called The Alameda; thence running at right angles to Autumn Street, Westerly 88 feet and 11 inches; thence at right angles Northerly 45 feet; thence at right angles Easterly 88 feet and 11 inches to the Westerly line of Autumn Street; thence Southerly along the Westerly line of Autumn Street, 45 feet to the point of beginning and being a portion of the Los Coches Rancho.

PARCEL 9:

COMMENCING at a point on the Easterly line of South Montgomery Street, formerly East Street, distant thereon 150 feet Southerly from the point of intersection thereof with the Southerly line of Santa Clara Street, formerly called The Alameda; said point of commencement being the Southwesterly corner of that certain parcel of land as described in the Deed from Patrick Kelly and wife to Frank M. McKenna, recorded December 16, 1862 in Book 'Q' of Deeds, page 293; thence at a right angle Easterly on and along the Southerly line of the land so described in the Deed to McKenna, 113 feet to the Westerly line of that certain parcel of land as described in the Deed from Patrick Kelly and wife to Michael Quigley, recorded February 8, 1968 in Book 8 of Deeds, page 284; thence Southerly on and along the Westerly line of lands so described in the Deed to said Quigley and the Westerly line of that certain parcel of land so described in the Deed from Patrick Kelly and wife to Michael Corbit, recorded October 6, 1864 in Book 'S' of Deeds, page 781, 50 feet; thence at right angles Westerly 113 feet to the Easterly line of South Montgomery Street; thence Northerly on and along said Easterly line of said South Montgomery Street, 50 feet to the point of commencement, being a portion of Lot 20 of the Los Coches Rancho, according to a Map of same recorded in Book 'A' of Maps, at page 47 in the office of the Recorder of the County of Santa Clara, State of California.

(Cont'd on next page)

EXHIBIT A

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PARCEL 10:

COMMENCING at a point on the Westerly line of Autumn Street (formerly St. Mary's Street) distant thereon 150 feet southerly from the point of intersection thereof with the southerly line of Santa Clara Street (formerly The Alameda), said point of commencement being the southeasterly corner of that certain parcel of land as described in the deed from Western Well Works, Inc., a corporation to George E. Woods and wife, dated April 1, 1927, recorded April 16, 1927 in Book 216 of Official Records, page 114; thence at right angles Westerly on and along the southerly line of land so described in the deed to said Woods, 113 feet; thence at right angles southerly 60 feet; thence at right angles Easterly 113 feet to the Westerly line of Autumn Street; thence Northerly on and along the Westerly line of Autumn Street, 60 feet to the point of commencement.

PARCEL 11:

beginning at a point on the southerly line of Santa Clara Street, formerly The Alameda Road, 60 feet Westerly from the southwesterly corner of said Santa Clara Street, formerly Alameda Road, and the street known as Autumn Street, formerly St. Mary's Street; thence southerly and parallel with Autumn Street, formerly St. Mary's Street 120 feet; thence Westerly and parallel with said Santa Clara Street, formerly Alameda Road, 58 feet; thence Northerly and parallel with Autumn Street, formerly St. Mary's Street, 120 feet to the southerly line of Santa Clara Street, formerly Alameda Road; and thence easterly and along said southerly line of said Santa Clara Street, formerly Alameda Road, 58 feet to the place of beginning. The same being a part of Kelly's Subdivision of Los Coches Rancho.

EXHIBIT A

WEST SANTA CLARA STREET

SOUTH MONTGOMERY STREET

SOUTH AUTUMN STREET

N

PARCEL 7

PARCEL 4

PARCEL 11

PARCEL 1

PARCEL 3

PARCEL 2

PARCEL 8

PARCEL 6

PARCEL 5

PARCEL 9

PARCEL 10

WAGNER
PARCEL
259-38-29

MARTINI
PARCEL
259-38-09

WAGNER
PARCEL
259-38-28

WAGNER
PARCEL
259-35-10

WAGNER
PARCEL
259-38-27

SCALE 0 60 FEET

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EARTH



TECH

FIGURE 1

SITE LOCATION AND PARCEL MAP

SAN JOSE ARENA BLOCK 5A PARKING LOT
SAN JOSE, CALIFORNIA

FEBRUARY, 2001

34800

EXHIBIT A